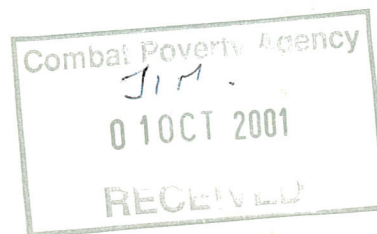


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# Money Matters

No **2**/01



The Consumer DebtNet Newsletter ♦ September 2001

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**Contributions from:**

**Germany ★ Netherlands ★ Great Britain ★ Ireland  
Scotland ★ England**

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# Message from the Editor

Well folk, here we are again with another issue of Money Matters.

This issue takes the opportunity to look more closely at some of the interesting problems and views raised by colleagues in Germany and the Netherlands. We also have news of a new approach to debt management that has been circulated for consultation by the Scottish Executive and news of an exciting development in E-learning for money advisors in the UK.

I am pleased to say that a lot is happening in the world of Debt Counselling and Money Advice and that at long last Overindebtedness is achieving the high profile that is needed if we are to succeed in the fight to secure that best possible services and procedures to assist debtors across Europe.

However, back to the more mundane aspects of the Editor's role and that is to ensure that there are sufficient articles for the next issue. Don't miss your last chance to write an article and have it printed in the last ever issue of Money Matters to be published. Funding for Money matters expires at the end of December and we will no longer be publishing hard copies of the newsletter, we will however, publish it on the website. So folks, this is your last chance, don't let your colleagues down; make sure we go out with a bang and a bumper issue, articles to be submitted to me by the middle of October please.

Thanks for your support

*Joan Conlin-Ramsay*



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## Germany

The following two articles deal with the topic of Insolvency across National Boundaries. The topic is considered and discussed from differing perspectives both make interesting reading and allow us to reflect on the reality of making legislation work effectively.

# Insolvency claims across national boundaries

*Claus Triebiger, S.O.S. Alltag e.V., Frankfurt am Main, discusses the realities and challenges that arise from cross border transactions and the single market.*

### A new clientele

For some time now, S.O.S. Alltag, our debt and insolvency advice service based in Frankfurt, has seen an increase in dealings with managers, small businesses and freelance workers in Germany. However, lately our office is being approached by a totally new kind of advice-seeker. These are the 'cosmopolitans'; some of them individual consumers, others owners of small to medium-sized companies, which operate Europe-wide or globally and whose operational centre is not clearly definable.

An Indian citizen who travels worldwide as a sales rep for a multinational company based in Germany has approached us for advice. He owns property in Iran and Italy, has his residency in the Caribbean – though he can only spend ten days of each year there – and is in debt to German banks.

Then there is the Frenchman who lives near Paris, owns a flat in Luxembourg and who has accumulated debt in Germany. His insolvency claim in France was thrown out because it was said not to fall under the French court's jurisdiction.

And there's the yet-to-be-successful German entrepreneur who wants to set up a limited company in England and came to us to ask whether insolvency procedures against him in Germany will affect this new venture.

In short, Frankfurt's international business community is throwing up a new, cosmopolitan category of client and S.O.S. Alltag, which has been working successfully with insolvency claimants all over Germany since 1995, has adjusted its services to be as open and accessible as possible to this new clientele, whatever their national status or residency. Our new counselling service for international insolvency claims was presented to the professional world in 2001. We aim to further develop this, using feedback from clients and colleagues.

### Internationally operating businessmen claiming insolvency: Whose jurisdiction?

Cases such as those described create a complex counselling situation. In Germany, they fall totally outside of our framework of jurisdiction.

Here, institutions, which provide grants for counselling, make these grants dependent on residency in a certain district or on a certain status (for example, ineligibility of self-employed people). The difficulty is that the operational base of our new clients cannot be defined as one city or district, plus there are likely to be a number of complicating factors in their operation. The client may be self-

employed in an international context. The client's residential status may involve several residences internationally. In the client's workplace, the employer may not be of the same nationality as the employee. There may be connections with other businesses internationally. Then there are the regulations concerning real estate or assets – whether passive or active – in different countries.

If these clients were dependent on German jurisdiction, they wouldn't be eligible for any grants for debt counselling due to the rules on residency. In the German context we're inclined to ask, where is the 'new Europe', as proclaimed by the politicians, if jurisdiction only functions within the narrow confines of city boundaries? Should we, for example, advise the above-mentioned cosmopolitan with actual residency in the Caribbean to take up residency in Sweden (which has the most liberal insolvency legislation in Europe), start his insolvency procedures there, and apply for secondary procedures in Germany? Whatever should be done in this and similar cases: It's clear that, in the international context, new solutions are urgently required.

### Legislation

There is only one regulatory law in Germany dealing with insolvency (1).

Much more significant in this context is the European Agreement for Insolvency Proceedings. This agreement has never been ratified but is used as guidance for the proceedings of international insolvencies. Further guidelines in the German context are our Regulations for International Civil Legislation (to be found in the Regulations for Civil Trials (2), and in the Introduction to the German Civil Code (3)). There also exists bilateral agreements between particular countries over jurisdictions regarding trading and civil legislation (4). Otherwise, one is bound by the varying insolvency laws of each country and their international application and effects.

Thankfully, on 31 May 2002 new European regulations, closely echoing the European Agreement for Insolvency Proceedings, will finally come into effect (EC Regulation 1346/2000). But ongoing discrepancies in national and international insolvency legislation will still mean that many procedures are hardly practical or workable. However, out of such complexity can come opportunities. The key is to deal with each case individually, forging paths through seemingly incompatible national legislations.

### The need to build up our international network

The new and increasing challenge of 'cosmopolitan' clients means that it is time for debt counsellors to pull together even more on a European level. For this we need to build up our network between colleagues in all countries whose knowledge of their own insolvency legislation can be fed into the counselling process. Conferences like the one in Göteborg, organized by IFF Hamburg last year, have been steps in developing this network. Previous conferences in Hamburg, Bremen, Finland, Birmingham, Scotland, Dublin, Stockholm and Strasbourg resulted in the setting-up of international coalitions of debt specialists and, not least, the founding of The Consumer DebtNet (CDN); also the magazine 'Money Matters' (Stockholm, 1994).

Two vital tasks for this network of specialists must be to lobby for international legislation and also to

influence the adoption of such legislation by individual countries. The importance of such lobbying cannot be stressed highly enough.

In our experience at S.O.S. Frankfurt, many insolvency procedures can be dealt with by mail and even by e-mail; there is no need for the counsellor to be present on the spot. Obviously, in the age of internet and e-mail, this is the way forward for international insolvency procedures; counsellors in one country accessing information on particular legislation from a fellow-counsellor in another country who is able to supply it to a European mailbox. Why should 'virtual' insolvency claims not be processed as such on a European scale?

There is much to indicate that international insolvency cases will eventually cease to be complex 'one-offs' requiring painstaking individual attention, and will become routine procedures. But this can only happen if and when debt counsellors begin a systematic sharing of our expertise internationally. We suggest that the time is ripe for the formal establishment of an international debt counselling service.

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### Footnotes

- (1) Art. 102.EG. Inso.
- (2) Die Zivilprozessordnung
- (3) Einführungsgesetz zum Bürgerlichen Gesetzbuch (EGBGB); see especially subheading: Übereinkommen über die gerichtliche Zuständigkeit und die Volls treckung gerichtlicher Entscheidungen in Zivil- und Handelssachen (EuGVU).
- (4) For example, the Germany – Austria Bankruptcy Agreement, or *das Deutsch-Österreichische Konkursabkommen (DoKVAG)*





# International assets and insolvency law

In this article, German lawyer and insolvency practitioner, Stephan Kling, addresses the tax and insolvency law implications of assets spread internationally in the case of insolvency of a consumer.

## Introduction

International insolvency proceedings involving the assets of private individuals as consumers were once rare, but these days are long gone. Indeed, individual insolvency proceedings are regularly begun in the state in which the debtor lives and/or has assets.

In Germany, article 102 par. (1 EGIInsO) universally governs that insolvency proceedings initiated in another state fundamentally encompass the debtor's assets in Germany. In addition to this, special German insolvency proceedings covering assets in Germany are explicitly intended to take place as well. (Art. 102 par. 3 EGIInsO). These special proceedings aim to protect the German creditors of foreign debtors by paying off their interest from the debtor's assets situated in Germany. A German tax assessment is dependent on recognition of insolvency proceedings initiated in another state and according to German jurisdiction, main proceedings initiated in Germany (even in their initial stages) also encompass the debtor's total global assets. Only in some individual cases will it be necessary for the liquidator to legitimise him/herself in other states. In such cases, approval of the state concerned in relation to sequestration under German insolvency proceedings is a major factor.

On 31.05.2002 EC Regulation No 1346/2000, which was agreed on 29.05.2000, is due to come into force<sup>1</sup>. This represents a successful attempt by Germany and Finland to regulate cross-border insolvencies for EU states with the exception of the UK, Ireland and Denmark.

Nevertheless, because of the differing levels of effectiveness of domestic insolvency proceedings on assets situated abroad, it would seem lucrative for a forward-looking potential debtor to strategically place his/her assets abroad.

A seemingly endless number of



Stephan Kling, Germany

advisors are on hand, promising an end to all worries and even a life free of bother from the tax authorities. And it is this, the saving of as much of their assets as possible from the interest of the tax authorities, that forms a big attraction for debtors and is something that becomes a great interest at an early stage, since they are keen to enjoy their rescued assets - something best done while they remain unidentified and undivided.

The question is, however, whether this will actually work during insolvency proceedings or, if it is risky before insolvency, whether insolvency proceedings will turn into a nightmare.

Two such variations will be addressed, which are generally accepted as forming an optimal way of creating a wealthy future out of hard times. To this end, just how this apparently successful system works will be described, in order to specify the possible consequences of such a strategy, as well as pointing out the dangers to a often hoped for discharge<sup>2</sup> and consequences as far as tax liabilities are concerned.

Alongside self-styled advisors, this

information should also serve as a strong warning to debtors, who would perhaps like to return home again to enjoy their pensions one day.

One thing is already clear: Increasing numbers of international insolvencies are set to bring with them an increasing number of creditors prepared to move abroad in the pursuit of debtors and their assets. The tax authorities at home will be among these creditors. Indeed, the tax authorities abroad will also be interested in assets located in a given country that may be subject to tax. To this end, differentiation between absolute and restricted tax liabilities is the only issue that remains.

In a limited number of areas, however, investment of assets that have been strategically optimised for tax purposes can actually be recommended. At first glance, tax evasion may well seem like a clever approach that will work. In doing this, however, debtors keen on creating such a paradise often overlook the fact that tax avoidance strategies such as these are pursued and penalized by the legal systems of all nations and that normal taxation will apply. In point of fact, most of these cases will also be subjected to double taxation under agreements covering this area and agreed between the nations concerned.

## Spain

A hot Mediterranean country in which the German liquidator and tax authorities play no role?

Provided a person is registered in Germany and regardless of whether they possess property abroad or not, an insolvency application served against him/her will be examined by the courts to determine whether insolvency proceedings are required. Therefore it is thought to be helpful to transfer assets into another country such as Spain and invest them there.

Enforcement difficulties between Germany and Spain are also thought to help in this.

Would-be advisors also recommend transferring assets to the status of independent legal authority. Doing this is thought to provide the finishing touches to a largely tax-free situation. It is not necessary to go into details. It goes without saying that they would read like something out of Alice in Wonderland. The truth of the matter is very different indeed, and one is soon brought back down to earth, as will become clear from the following consequences.

To start with, tactics playing on potential enforcement difficulties are soon exploded. Debtors may, of course, point out that there are no references recognizing German insolvency proceedings in the agreement<sup>3</sup>. But until simplifications in law come into force, the liquidator will approach the Spanish High Court for recognition as liquidator and authorised enforcer in a special process and submit an interim application to take enforcement action to provisionally secure assets. The strategy of transferring assets to that of independent legal authority status creates more difficulties for the liquidator, since his/her enforcement actions now have to be enacted against a different legal entity, in addition to in another country.

Nevertheless, enforcement is by no means impossible.

The prerequisite for this is merely an effective challenge of the legality of actions taken, in order to carry out interim enforcement action.

The only course of action left open to the debtor is a last-minute attempt to transfer assets again to a third party, who, acting in good faith, disappears with the assets. No matter how skilful the liquidator, he/she will almost certainly have to contend with obstacles in the form of a slow moving Spanish legal system, which is incredibly difficult to speed along.

As far as German tax liabilities are concerned, a debtor resident abroad may cite the prevailing enforcement agreement. But as soon as the tax authority makes an insolvency application, it is no longer responsible for enforcement, but rather an appointed liquidator, where

actions described in the previous section apply.

The question as to taxation of foreign income and assets at home and abroad remains.

In addressing this we will assume a situation in which the main residence is at home. Should this not be the case, absolute liability to tax in the respective country exists anyway. To begin with it is worth addressing the frequency of taxation on real estate abroad. Real estate is commonly taxed in Spain in the form of a net assets tax and income tax. It is also worth mentioning that when a residence is set up Spain, the *Patrimonio* encompasses all other assets



located abroad. According to the double taxation agreement with Germany, the only exception to this is real estate situated in Germany. Income of non-residents must be declared in Spain. Of course, the usual capital allowances remain. Such income does, in comparison to Germany, enjoy a lower rate of taxation. Those wanting to take advantage of this situation, however, overlook the fact that income must also be declared in Germany, where the only measures in place to avoid double taxation are in the form of a deduction. From this it is clear that dreams of a tax paradise abroad are unfounded.

Income and assets not declared, as well as attempts at tax avoidance inevitably lead to liability, regardless of any polished strategies thought up by an advisor.

Undeclared income or assets abroad can adversely impact upon a German insolvency process and a hoped for discharge, which, on request of a creditor, can all too easily be denied<sup>4</sup>.

Variations on the discharge legislation have been known in Scandinavian countries<sup>5</sup> and the UK<sup>6</sup> for several years, making these discharge considerations basically understandable in these countries too. The liquidator is also legally required to collect assets situated abroad during main insolvency proceedings ahead of this. All income and assets must be declared to the tax authorities following this and a tax return must be completed. Through this uncovering, the liquidator introduces foreign income and assets to German taxation and the different forms of tax, even if it is not he/she who has to complete all tax returns.

## Switzerland

If the attraction in Spain is the climate, then it's the banking secrecy that is the attraction in Switzerland. It is for this reason that many debtors have a numbered bank account and other things, with the goal of preventing creditors access, while at the same time saving tax. Of course, this is also supposed to be of help in the event of insolvency proceedings. Here too, however, debtors have got their sums wrong. The liquidator will attempt to get hold of information (bank addresses and share certificate numbers) and in the event of success will take immediate action and, with recognition acquired in Switzerland, set about enforcement. Recognition fundamentally obliges banks to reveal information.

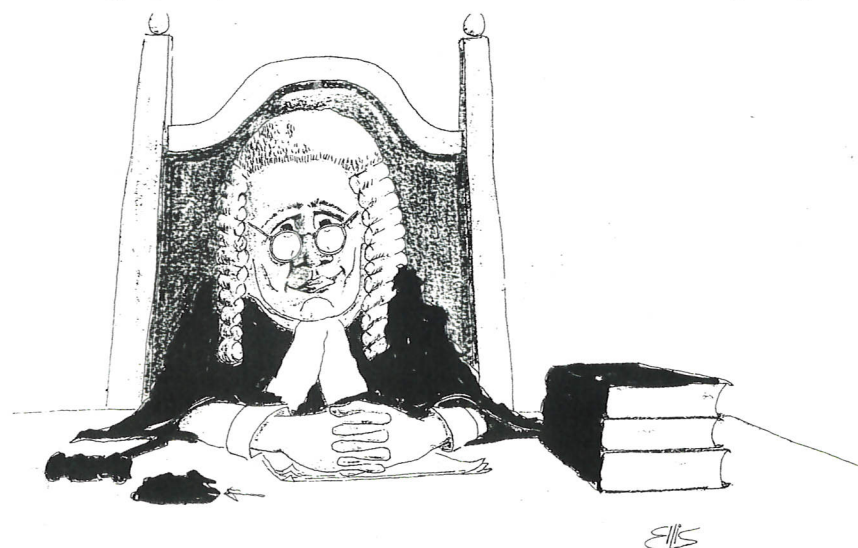
Apart from normal tax privileges, income and assets are also subject to taxation in accordance with individual tax laws in Switzerland too, regardless of whether Federal, cantonal or local taxes are involved. And it is for this reason that tax evasion in Switzerland is also prosecuted under criminal law. It almost goes without saying that Switzerland has made the necessary legislative arrangements for dealing with tax evasion



attempts using a legal authority. Indeed, in Switzerland they even go so far as to prosecute directly legal persons behind or actively involved in such activities in accordance with criminal law and in addition to tax avoidance, also to prosecute them for tax evasion. This double penalty does seem dubious set against the EMRK (European Human Rights Convention) but is nevertheless common practice in order to levy a tax penalty in addition to a criminal penalty. So debtors not complying with their tax return obligations in Switzerland will find little comfort.

Actual taxation with regard to foreign income, on the other hand, is arranged according to the respective double taxation agreement with the country concerned. Altogether a total of 52 arrangements of this kind exist with Switzerland, including with Germany, Spain, Ireland, Finland, Poland and most other European countries. Again, taxation of real estate in the country in which it is situated applies using the deduction method, as well as taxation of income and assets.

According to the arrangement, a German national, who has moved to Switzerland, can be subjected to the full extent of German taxation for a period of five years and for all German income and assets. Germany regulates the fundamentally difficult assessment situation for double residency cases simply with a special provision. Even if the residency in Switzerland comes first according to the law of the two countries, Germany retains an absolute right to taxation (!), when a permanent residence is maintained. The illusive tax evasion goal, then, is seldom achieved.



One exception to this is, of course, withholding tax.

Income earned during self-employment by a debtor in Switzerland is fundamentally subject to tax in the country of residence, earnings received through work of a non self-employed nature are subject to tax in the country of work, if short-term work is not involved.

A certain peculiarity does exist with Germany as far as the cross-border commuter is concerned. Taxation is applicable in the country of residence, with an individual Swiss taxation right of 4.5%.

A German debtor may initially count on Switzerland's discretion, which has no formal agreements with Germany and most other nations and which does not pass on information that uncovers tax evasion.

At the end of the day, however, this will prove to be of little help, as the liquidator is required to complete the appropriate tax returns on uncovering information. This leads to normal taxation. Irrespective of whether the liquidator uncovers earnings or not, all tax evasion actions taken cannot prevent the fundamental and already applicable right to taxation and even the most polished of strategies cannot help in preventing the inevitability of taxation.

## Conclusion

At the end of the day, each and every debtor is free to look at the decision to hide assets abroad as a sporting challenge. By now, however, it should be clear to debtors that today, and in the future, the chances of winning the potentially

lucrative game with the liquidator and tax authorities are slight compared with the past.

The liquidator, especially, usually has enough authority to reverse all measures taken by the debtor. Indeed, this is one of the main reasons why the tax authorities are all too happy to serve an insolvency application. In the event of the liquidator not possessing the necessary authority in individual circumstances, the creditors can provide him/her with the relevant authorization. As far as tax is concerned, it has been shown that debtors wanting to avoid prosecution and adhering to tax law both at home and abroad stand to gain little prior to initiation of insolvency proceedings. Those claiming otherwise are peddling misleading information. Therefore, the result of such action is tax evasion according to the respective international tax rules. To run this risk is nothing other than reckless. This applies to a greater extent in cases of active insolvency proceedings and even more so if the debtor him/herself has made an application for discharge.

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## Footnotes

- <sup>1</sup> EC Regulation No 1346/2000 on insolvency proceedings, (Official Journal No L 160 of 30.06.2000). See also Fischer, the new European council regulation on insolvency proceedings, *Money Matters* 1/01, p. 11.
- <sup>2</sup> See also Scholz, consumer insolvency and discharge in accordance with the new insolvency arrangements, *DB* 1996, 765; Wittig, insolvency arrangements and consumer credit, *WM* 1998, 157 and 209.
- <sup>3</sup> Art. 1 EuGVÜ dated 27.9.1968 in the wording of the 3. entry agreement dated 26.5.1989.
- <sup>4</sup> §§ 286 ff InsO.
- <sup>5</sup> Koskelo, *Schuldensanierung für Privatpersonen in Finnland*, *ZEuP* 1995, 622.
- <sup>6</sup> Sec. 278, Insolvency Act 1986.

# German Network for Consumer Debt Counselling

(Arbeitsgemeinschaft Schuldnerberatung der Verbände (AG SBV))

**Marius Stark, Speaker for the German Network for Consumer Debt Counselling provides an insight into how the German network is organised.**

## How is the AG SBV organised?

The German Network for Consumer Debt Counselling was founded on April 6<sup>th</sup> 1995 to provide a forum for qualified co-operation that went beyond the level of an association.

The main body of the organisation is the Standing Committee. This is made up of representatives from each member organisation. A maximum of two representatives per member organisation is allowed. This committee has several duties and one of the tasks of the Standing Committee is to be responsible for nominating the 'European' delegates.

The Standing Committee has the authority to establish qualified teams or working groups to focus on certain issues. At the moment, there are two of these working groups in existence, these are:

- Arbeitskreis Berufsbild (working group for job description).
- Arbeitskreis InsO (AK InsO) (working group for consumer bankruptcy).

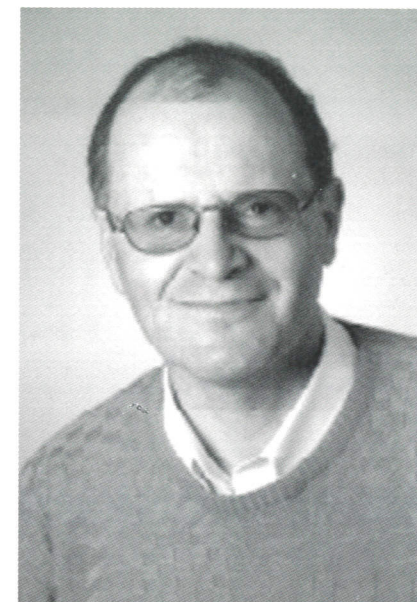
The members of the Standing Committee are also responsible for electing a speaker and a vice speaker to represent the organisation. These officers hold the posts for a two year period and the Executive Speaker is the official representative of the AG SBV.

## European Representation

The AG SBV represents German debt counselling organisations at the European level. The Standing Committee nominates the German representatives for the European Network "Consumer Debt Net" (CDN).

## Tasks and Objectives

The AG SBV co-ordinate the professional



Marius Stark, The German Network for Consumer Debt Counselling.

activities and efforts of their members in the field of consumer over-indebtedness and debt counselling in Germany.

The main tasks of the AG SBV are:

- To provide support on professional consumer debt counselling through the provision of systematic information, counselling and co-ordination of networking among the members.
- To provide support on matters relating to consumer debt counselling from the non-governmental organisations across Germany through co-operation on major issues with national and federal authorities, communal chief associations as well as institutions of the state administration and beyond.

- To participate in legislative change through providing proposals and comments.
- To encourage and support co-operation with other Networks for Consumer Debt Counselling across Europe.
- To encourage and support basic

and further vocational training at a national level.

- To co-operate with scientific research.
- To develop, co-ordinate and hold professional conferences in Germany.

## Materials and Comments

The AG SBV and its working groups have prepared and submitted materials and comments on issues relating to their fields of work. To date, the following materials and comments are available:

- Current situation in relation to indebtedness and consumer debt counselling in Germany – need for action in politics and administration in order to secure the offer of counselling (October 1998)
  - Consumer debt counselling – a new profession? Report of a professional conference from December 14<sup>th</sup>/15<sup>th</sup> 1999
  - Out-of-court agreements – information and aid (AK InsO (ed.), March 1999)
  - Application forms to initiate bankruptcy trials (AK InsO (ed.), March 2000)
  - The AK InsO's policy document concerning "necessary legislative changes and other measures for a functioning consumer bankruptcy procedure in court" (April 2000)
  - "Regional negotiation procedures for support and co-financing of consumer debt counselling by regionally committed financiers" (April 2000)
- To obtain copies of these papers contact the AG SBV Speaker.

## Members of the AG SBV:

(The translations are not the official titles.)

- Arbeiterwohlfahrt Bundesverband e.V. (AWO) (National Worker's Welfare Association)
- Arbeitsgemeinschaft der Verbraucher-



verbände (AgV) (Group of Consumer's Associations)

- Bundesarbeitsgemeinschaft Schuldnerberatung e.V. (BAG SB) (National Team for Consumer Debt Counselling)
- Deutscher Caritasverband (DCV) (German Caritas)
- Deutscher Paritätischer Wohlfahrtsverband e.V. (DPWV) (German equally represented welfare association)
- Deutsches Rotes Kreuz (DRK) (German Red Cross)
- Diakonisches Werk der Evangelischen Kirche Deutschlands e.V. (DW EKD) (Welfare Association of German Evangelical Church)

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## Ann-Mari Rydell

### The youngest looking pensioner in CDN

Many of you reading this article will know Ann-Mari Rydell. You may have met her at various CDN conferences over the years or you may know her because of her work in Sweden, or maybe you have simply heard her name. However, I will at this point take my life in my hands and take this opportunity to alert everyone that she is retiring on October 19th 2001.

Ann-Mari has been involved in Household Economics for many years now and is very definitely an expert on that subject. She has been, over the years, a stalwart supporter of CDN and has played an active part in the running of the organisation and its projects.

She has been unstinting with her time and effort and has been instrumental in keeping Money Matters and the CDN Website going.

On a personal level, I have known Ann-Mari since June 1994 when I met her at the Stockholm conference, the impression she gave me was that she

was a strong woman who had her own opinions and knew her own mind, one that was committed to her work. I have learned over the years that this first impression was quite correct. I am very pleased to say that I have also had the opportunity to get to know Ann-Mari well and I am honoured to count her amongst my personal friends. She has over the years been a source of constant support and encouragement to me and given the often experienced difficulties associated with editing Money Matters I have needed that support and I have valued that support tremendously.

I would ask all of you who know her to think of her on the 19 October, we may envy the new found leisure time she will have and her new relaxed lifestyle but can we all take a minute to wish her well, to thank her for her hard work and to wish her well for the future and a long, happy and healthy retirement.

*Joan Conlin-Ramsay*

## Netherlands

# Evaluating the Dutch Consumer Bankruptcy Act

*In this article three people, Nadja Jungmann, Bert Niemeijer and Marijke Ter Voert, all of whom were involved in evaluating the Dutch Consumer Bankruptcy Act provide us with a snapshot of their findings.*

**The Dutch Ministry of Justice has recently evaluated the Dutch Consumer Bankruptcy Act<sup>1</sup>, which came into force in 1998. However, before we describe the results of this study, we will provide a short explanation outlining the Dutch debt settlement procedures currently in place.**

### The Dutch System.

In the Netherlands, debtors who have trouble meeting their financial obligations are obliged to try to reach a voluntary debt settlement ('debt settlement by agreement' or 'debt-reconstruction') with their creditors before they can go to court for a fresh start.

In practically every municipality one will find organisations with the specific task of assisting debtors to reach such a debt settlement. These organisations were already in existence before the law came into force.

Once the voluntary debt settlement is agreed upon, the debtor is obliged to make regular payments of a predetermined amount, i.e. the maximum he can afford, for a period of three years.

If the debtor is able to do so until the very end, the remaining portion of his debts will be remitted, and he can make a fresh start.

If the debtor is unable to arrive at such an agreement with the creditors concerned, then he/she may ask the court to impose a legal debt settlement. In this case the court will appoint an administrator ('curator') who will be paid from the proceeds of the debtors estate. (Just like the cost of the publishing the name of the debtor in newspapers.)

These latter provisions should make legal debt settlements less attractive (financially) for the creditors than



*Nadja Jungmann, The Dutch Ministry of Justice, Netherlands.*

voluntary debt settlements. This should, in turn, reduce the workloads of the courts. As in the case of the voluntary debt settlements, the debtor is obliged to pay fixed amounts (as much as he can afford).

In special cases this payment period may be extended to five years.

### The objectives of the Act.

In the first instance we will describe the three objectives of the law and we will consider whether they have been realised. Then, we will describe some of our most important general conclusions.

#### **The first objective: to provide debtors with a fresh start.**

In cases where creditors do not want to agree to a voluntary debt settlement, debtors can go to court and ask for a legal debt settlement. If the debtor has acted in good faith the court will provide for a legal debt settlement, this is intended to entail a fresh start for the debtor.

Between the 1<sup>st</sup> December 1998 (when the Act came into force) until the 1<sup>st</sup> January 2001, a total of 15.254 legal debt settlements were imposed by the courts.

Only two percent of the debtors concerned failed to meet their payment obligations resulting in the legal debt settlement being cancelled.

Although none of the debtors have completed the three year term yet, it would appear that the first objective will be met in the future.

#### **The second objective of the Act: to encourage creditors to agree with a voluntary debt settlement.**

The legislator's intention was to make a legal debt settlement financially less attractive to the creditors compared to a voluntary settlement. This would promote the latter and thus reduce the workload of the courts and increase the number of voluntary debt settlement procedures. Since the Act came into force the number of voluntary debt settlements has decreased and we can therefore conclude that this second objective has not been attained.





There are several reasons which explain why the number of voluntary debt settlements decreased instead of increasing since the Act came into force.

- 1 In certain cases a legal debt settlement appears to be more attractive (financially) for creditors than a voluntary debt settlement.
- 2 The working methodologies of local organisations assisting debtors to obtain voluntary debt settlements have changed because of the Act. The effect of these changes is a bigger difference between the implementation of voluntary debt settlements and legal debt settlements.
- 3 In some cases, no effort at all has been made to reach a voluntary debt settlement before debtors go to court.

Given the fact that a legal debt settlement imposes a heavier burden on the debtor than the voluntary option, we find it a matter of concern that the number of voluntary debt settlements has decreased instead of increased.

#### **The third objective of the Act: to reduce the number of consumer (private individual's) bankruptcies.**

One way to accomplish this objective is to give private individuals, against whom bankruptcy proceedings have been started, the opportunity to request a legal debt settlement. In the period reviewed, the number of this category of bankruptcies has decreased. It appears that this objective is being met.

#### **Recommendations.**

There are a number of ways in which the effectiveness of the Act may be increased. The Ministry of Justice study submits the following tentative recommendations:

- A legal debt settlement should be made less attractive to creditors than a voluntary debt settlement. Local agencies should improve their services to help debtors reach voluntary debt settlements.
- Prevention is better than cure: more attention should be paid to the causes of the problematical debt and the ways debtors can be assisted in avoiding the pitfalls of creating new

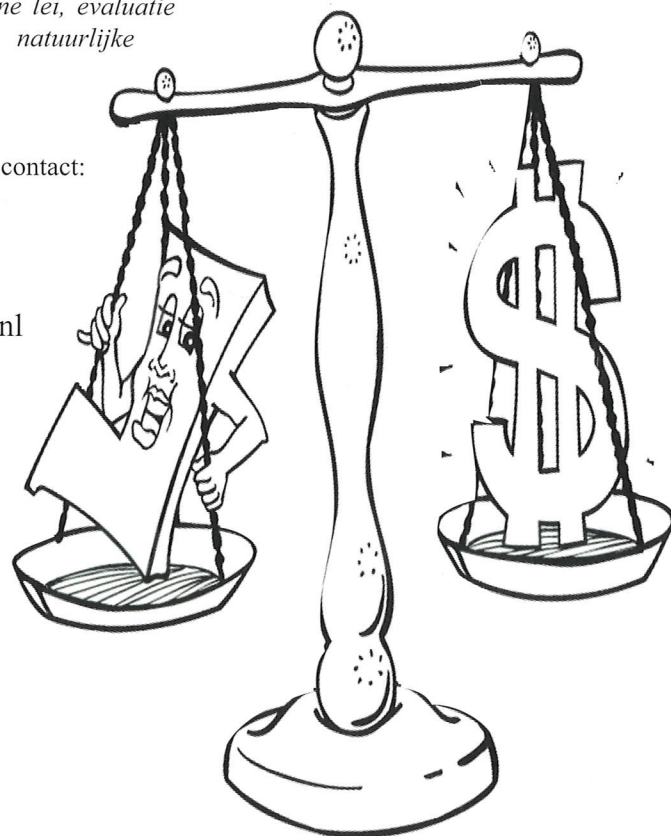
debts. This should be part of the legal debt restructuring process. A 'fresh start' will not last very long if these matters are not addressed in an early stage.

- Certain debts should be excluded from the Act. (At the moment only debts incurred for studying are excluded.) We think damages paid to crime victims should be out of reach of the settlements as well.
- Small entrepreneurs (small businesses) are left out in the cold. The legislator wants debtors to try and reach a voluntary debt settlement before they go to court for a legal debt settlement. But local agencies hardly provide any assistance to the small entrepreneurs to enable them to reach a voluntary debt settlement. Thus even though a quarter of all legal debt settlement files relates to small entrepreneurs, they can hardly get any assistance. In the future these entrepreneurs should get assistance in reaching voluntary debt settlements.

This article is based on the evaluation: Jungmann, N., Niemeijer, B., M. ter Voert 'Van schuld naar schone lei, evaluatie Wet schuldsanering natuurlijke personen' Wodc 2001.

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The full report can be found on [www.wodc.nl](http://www.wodc.nl)



#### **Footnotes**

- <sup>1</sup> This act is named 'Wet schuldsanering natuurlijke personen'. (Kamerstukken II, vergaderjaar 1992-1993, 22 969 and Kamerstukken II vergaderjaar 1992-1993, 23 429)

## **Great Britain**

# **The E-Learning Resource for Money Advisers: An Overview**

**Emma McFarland explains how the E-Learning Resource will revolutionise the learning opportunities for money advisers working in Money Advice Trust [MAT] Partner Agencies\*.**

After the bursting of the e-commerce bubble and the well documented misfortunes of the Internet's big players such as Yahoo and Amazon, you could be forgiven for thinking the Internet had been somewhat overhyped. But, from the ashes of the headlines which predicted the end of the high street, the office and life as we know it once the 'information superhighway' hit our lives, has emerged an unlikely success story – e-learning. For years, e-commerce's poor relation, e-learning is now the fastest and most successful growth area on the Internet.

The reason for e-learning's success is quite simple – it makes sense. Whilst buying a pair of shoes via a computer was never really going to be a winner, the ability of computers to act as both a gateway to access learning and a vehicle to deliver and support learning cannot be disputed.

Computers have long (in IT terms) been used to deliver learning via CD-ROMs and their effectiveness has been proven in numerous studies. Whilst the commercial sector has been quick to jump on the e-learning bandwagon, the voluntary sector has been slower to follow. This is understandable as technological solutions never come cheap and in such a fast-evolving sector, it can be difficult to keep up. In addition, IT resources and skills in the voluntary sector have, until now, been generally poor.

However, the potential of e-learning to improve on-the-job performance, motivation and support is immense. With the quality of money advice relying to such an extent on the dedication and existence of highly trained staff, e-learning was something the Money

Advice Training Development Forum\* [MATDF] simply could not ignore.

In this article I will describe in more detail what the MATDF E-Learning Resource [ELR] for money advisers is, its functions and benefits and how it will be implemented.

#### **What is the ELR?**

The ELR could be simply described as a highly sophisticated web-site which is dedicated to the provision and support of learning. Its main functions and features are summarised below.

#### **Information and News Resource**

The ELR will provide detailed information on the learning opportunities programme and strategy. It will also provide access to external and internal sources of money advice information such as government reports, research papers, articles, web-site links, etc. Much of this information will be available to download, so it can be printed and read off-screen. The ELR will also provide a means of disseminating information to a large number of people, for example updates for Yellow Route packs can be distributed in an instant to all those agencies holding a pack.

The ELR will also host a dedicated news resource. This will be updated on a regular basis

*Emma McFarland, Director of the E-Learning Resource project, Money Advice Trust.*

ensuring that money advisers can access the latest news and views from the money advice and related sectors at the touch of a button, all in one easily accessible place. It will also feature a noticeboard where managers can post information on forthcoming learning events, conferences, job vacancies, etc.

Generalist in-house tutors and MAT approved course tutors will be able to access information and on-line resources directly relevant to them via the dedicated tutor resource.





## Learning Resource

Traditional face-to-face courses will always have a significant role to play, but as a sole method of delivering learning, they have their limitations. Difficulties encountered on our existing courses include:

- trainees attending courses with varying levels of knowledge and experience, which can make tutoring difficult and the learning experience frustrating for trainees,
- lack of post-course revision materials - once trainees have finished a course, there is currently no follow-up. Numerous studies have shown that without follow-up, much course material is forgotten within a matter of days,
- many courses are highly intensive, requiring large amounts of factual matter to be covered in 1 or 2 days, leaving less time for interactive discussion,
- a number of studies have shown that interactive computer based learning is more effective in teaching factual knowledge than face-to-face courses,
- many agencies, particularly those in outlying areas, find it difficult to attend courses which may be held many miles away or on inconvenient dates

The E-Learning Resource will help address these issues by enhancing (not replacing wholesale) existing face-to-face courses with both on-line and off-line learning content.

This is best illustrated via an example. In future, if an adviser wishes to learn about the Consumer Credit Act, instead of enrolling on a 2-day face-to-face course, they will sign up for a Consumer Credit Act learning programme. The learning programme will usually feature a face-to-face course in addition to learning materials for the adviser to refer to /work through in their agency both before and after attending the course. These could include a background reading list, relevant news articles and reports, frequently asked questions about the course material, on-line links, etc. However, the most important aspect of these materials are the e-learning modules.

E-learning modules can be used for many different purposes, eg revision,

pre-course learning, on-the-job training, pre-course testing. Fun, easy-to-use and interactive, e-learning modules are an excellent way to learn terminology, procedures and basic concepts. They are structured in 10-15 minute chunks enabling them to be fitted around day-to-day work commitments. Before attending a course, advisers will undertake a number of these modules over a time period to suit them. This will give advisers a basic knowledge of the course material and will enable courses to be shortened in length (eg from 2-days to 1-day) and to focus on more qualitative discussion-based aspects of the course material. This should make courses more fun and far more effective.

Mentoring and motivational support will be provided to trainees who are undertaking pre-course learning in their agencies via a dedicated on-line discussion forum moderated by a tutor.

As well as learning programmes, the ELR will also feature on-the-job training and support. This could take the form of 'help systems', for example a step-by-step guide to completing a court form or it could be a detailed glossary of terminology. 'Just-in-time' modules will enable advisers to update themselves easily on changes in legislation, etc, by working through a short module on-line in their agencies.

## Communicating Resource

One of the chief complaints of money advisers is a feeling of isolation and a lack of support in their work. Discussion forums will enable advisers working in different member agencies and dispersed geographically to communicate with each other flexibly. There will be separate generalist, skilled, specialist and advanced forums and they will enable money advisers to debate issues or request advice from their peers. A tutor will moderate the discussion forums, ensuring 'misinformation' is speedily corrected and client confidentiality is respected.

## Administration and Management Resource

The ELR will feature a fully on-line booking system and all course administration will be carried out on-line. The booking system will make searching

for a particular course easier and advisers will know at the touch of a button whether a course is full.

Access to the booking system and all learning and communications features will be based around a learning rooms system. Advisers must sign up for membership of either the generalist, skilled, specialist or advanced learning room by assessing their skill level using a number of on-line tools. The aim of these rooms is to ensure advisers are accessing learning and on-the-job support at a level appropriate to their skills and experience. They will also facilitate the development of on-line communities. Once a member of a room, each user will have a personal home page which will feature a record of all their past, current and planned learning and a message facility.

Lastly, the ELR will feature a high level security system. Parts of the ELR will be publicly accessible over the Internet but the vast bulk of the site will be security protected on an Extranet. The system of security will ensure that only advisers working in MAT member agencies can access the secure aspects of the site and each adviser will access the site via a confidential personal log-in and password, protecting their personal data.

## Implementation of the ELR

The ELR is being funded by The Royal Bank of Scotland and developed in partnership with Alma Internet Publishing Ltd, in consultation with all MAT Partner Agencies and Lead Tutors. Consultation has also taken place with a focus group of advisers. It is obviously a major undertaking, with ramifications for all aspects of the current MATDF learning strategy. It represents two major developments:

- (i) the introduction of computer based learning, communication and administration;
- (ii) a fundamental change in the learning culture brought about as a result of the ELR promoting the introduction of self-directed learning, direct access to learning in the workplace, a more collaborative/social learning environment, integration between different forms of learning and the introduction of pre and post-course in-agency learning.

The implementation strategy is currently subject to final ratification but will focus on a phased approach, taking into account the IT resources in agencies and the learning support available to advisers. My wish is to implement the ELR in such a way that advisers embrace it rather than feel it is being foisted upon them. The aim is to begin implementation by late Spring 2002 in England and Wales, with the Scottish ELR being developed and implemented later in the same year.

\* MAT Partner Agencies  
England & Wales: Birmingham Settlement, Federation of Independent Advice Centres, Money Advice Association, National Association of Citizens Advice Bureaux  
Scotland: Citizens Advice Scotland, Money Advice Scotland  
Northern Ireland: AIAC, Northern Ireland Citizens Advice Bureaux  
Representatives from the Money Advice Trust and the MAT Partner Agencies together constitute the Money Advice Training Development Forum.

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*A version of this article was originally printed in 'The Adviser' magazine, July 2001.*

## Tribute to Brendan Roche R.I.P.

Money Advice Co-ordinator  
Cork Money Advice and Budgeting Service

*Money Advisors across Ireland and people across the UK who had come in contact with Brendan Roche were saddened to hear of his recent death. I have therefore taken this opportunity to reprint the text of the tribute paid to Brendan by that famous Irish media personality Gerry Ryan on his radio show on the 30 March 2001.*

### Gerry Ryan Show:

I was away last weekend in Miami with the rest of the team checking out the beginning of the U2 world tour Elevation 2001 when a very sad call came through to our office, Brendan Roche the Co-ordinator of Cork MABS and indeed a very very dear friend of the Gerry Ryan show had passed away. Our condolences this morning go out to Brendan's wife Anne, his daughters Valerie, Olga, Fiona and indeed his son Robert.

Brendan as many of our listener's will remember, and remember fondly was a guest of the show several times over the years. He was kind of like a sort of annual fixture here on the programme. He was the fella who helped set up the incredibly successful scheme that became known as MABS. MABS as you may recall stands for Money Advice and Budgeting Services and it is run with the support of the Department of Social Community and Family Affairs in co-operation with Credit Unions all over the country and basically what they were set up to do was help people organise their finances as well as helping out those who are in debt. I suppose it would be more to correct to say helping out those who were strapped and who just couldn't get through the week because they were getting completely swamped by their debt and many families owe a lot, owe a debt of gratitude to MABS and to Brendan. Brendan came up with the idea himself as working as a credit controller with his own

local Credit Union and he found over the years that he was meeting more and more families who were getting into more and more serious problems with money and things were made worse when they turned to money lenders. He was a deeply compassionate man and he knew that it just wasn't enough to put these folk under even more pressure to pay up as they were increasingly being put by the various financial institutions and of course the less than legal money lenders. They needed help of a very practical sort, and there really was nobody at one stage to turn to, they couldn't afford an accountant, they couldn't get advice from anywhere so he came up with the solution, MABS, and he came here on the programme to tell us all about the little scheme that MABS was at that time. They were just starting out and there was an absolutely tremendous response from listeners.

It just shows you the amount of people who were in trouble, probably still are, with money in this country. So, we thought we would just have to invite this fella back, and we invited him back again and again and again and every time he came on the programme I was deeply struck by his genuine concern for those in trouble. This fella really did care and there aren't too many of them around in the financial world, and today thanks to one man's passion and compassion, MABS has offices nationwide, in almost every county, in fact in every single county if I'm correct, and thousands and thousands of people including many Gerry Ryan show listeners have benefited hugely from the service.

Brendan Roche was a wonderful human being, he will be sadly missed but his legacy will live on for a very, very, very long time.



## Scotland

# Striking the Balance: A new approach to debt management

Many of you will be aware that Scotland, although it remains part of the UK, now has its own Parliament and Scottish Executive. It has, for hundreds of years had its own legal system.

The Scottish Executive took a long hard look at the legal framework in Scotland for dealing with debt and appointed a working group drawn from diverse backgrounds including, creditors, debt counsellors, academics, consumer representatives and Ministers of State. It set them the task of examining the existing framework and coming forward with recommendations and key elements of a new approach. These have formed the basis for the Scottish Executives report and consultation document 'Striking the balance: a new approach to debt management'.

The report stresses that the system must ensure that debtors are treated humanely, that they are given every opportunity to resolve their situation without the need for enforcement action and that a clear distinction is drawn between those who cannot pay and those who will not pay. The conclusion was reached that developing a new approach to debt management could not be seen in isolation from its wider environment and that a modern approach is needed to tackle the modern and persistent problem of debt in our society.

The recommendations are forward-looking and fair, they place emphasis on dialogue and negotiation rather than legal action and their implementation will provide protection for some of the most vulnerable people within our society while ensuring that the interests of the creditor are also protected.

## Recommendations

The recommendations are:

- Nationwide provision of user-

friendly information and advice for debtors.

- Setting up a debt arrangement scheme to help people pay debts in a managed way without the threat of enforcement action.
- Creating new incentives for debtors and creditors to reach negotiated settlements.
- Reforming the enforcement process to afford much greater protection to debtors in the event of legal action being necessary.
- Introducing new safeguards to ensure the enforcement action can only be taken against those who can, but refuse to, pay their debts.
- Assisting the debtor by providing opportunity for voluntary disclosure.
- A final sanction against those who can pay but unreasonably refuse to sell valuable non-essential goods to meet their responsibilities (compulsory sale order).
- Reforming the role and regulation of officers of the court when carrying out enforcement action.
- A wide range of further specific actions aimed at improving the regulation of credit and debt collection, the way local authority taxes are collected and the way representation within the court system operates.
- A fast-track process for compulsory sale in commercial cases (commercial attachment order).

These recommendations represent an amazing leap forward for Scotland and will, I believe, place us in the forefront of modern society in relation to how society and the law treats vulnerable people coping with the trauma

of overindebtedness. I am convinced it is the way forward and that it could meet the requirements essential to form the basis of a European wide approach to dealing with overindebtedness. Elements of the Scottish recommendations are already in force in some European countries but it is not just the recommendations, it is the spirit of them and the thought and humanity that went into their creation. It is this spirit that is needed at all levels across Europe to ensure that all of our citizens receive fair treatment.

A full copy of the report can be found at <http://www.scotland.gov.uk/library3/justice/stbf-11.asp>

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## England

# Overindebtedness – a definition

Many agencies and experts working in the field of money advice, debt counselling and household budgeting have tried produce a definition of "Over-indebtedness", Norman Laws Board member of the Money Advice Association of England and Executive member of the Board of CDN has arrived at a definition. The following is an excerpt from that definition.

*"Although the rich used most credit, it was the poor who had most debt."*

*Richard Berthoud and Elaine Kempson<sup>1</sup>.*

*"'credit' refers to any form of loan. However, although technically everyone using credit is in 'debt' because money is owed, if payments are made this is not problematic. Thus, the term 'debt' is used here to refer to any situation in which due payments have not been made. In other words, debt equals default or arrears."*

*Janet Ford<sup>2</sup>*

## A CDN desire

CDN Executive would like to host a seminar where experts from each European state would come together to examine, debate and agree definitions on a European level. This seminar looks to be somewhat off, indeed, given the current situation with CDN and the EC it may never happen. I think, therefore, that it is important to begin the process on a national level so that we can then move onto the pan European level with some concept of commonality.

If we are to generate wider debate, to create greater awareness of a European Definition of and to effect social change regarding 'Overindebtedness,' it is obvious that we must arrive at a "universal" definition of what we mean by 'Overindebtedness'.

Therefore I would like to look at the historical background of credit usage and can only do so in an English context. I hope that from the English context we can encourage other people in other countries to do the same so that we have comparative studies.

## Historical Background of Credit Usage in the UK.

Historically debt has been frowned upon in the UK, this is reflected in some of

the common proverbs to be heard in the English language:

- ❖ 'He that borrows must pay again with shame or loss.'
- ❖ 'He that goes a borrowing, goes a sorrowing'.
- ❖ 'Out of debt, out of danger.'
- ❖ 'Debt is better than death.' [but only just].

Interest, in England, was limited by law from 1545 to 1854 [at 10% then 5%] and from the eighteenth century borrowers gained growing legal protection over the processes for lenders to enforce payment, as seen in the creation of the County Courts in 1846 and the Debtors Act 1869. "The Chancery mends no man's bargain", said Lord Nottingham in [Maynard v Moseley], 1676.

The primary concern for law in the field of credit was not to protect the debtor from his creditors but to ensure that a debtor did not defeat his creditors by secret transfers of his assets to a third party. The Bills of Sale Act [1878] Amendment Act [1882], recognised for the first time that the debtor needed a measure of protection.

The lenders of money "enjoyed an unparalleled era of freedom and prosperity between 1854 and 1900 and serious abuses resulted. Trickery and extortion were rampant and borrowers suffered misery and hardship through

ruthless enforcement of security. The Report of the House of Commons Select Committee on Money Lending, published in 1898, showed that one lender had admitted to charging interest rates at 3,000%, [which pales into insignificance when set against the rate charged in two money lending transactions which came to the notice of the Director of Fair Trading. In the first, the annual percentage rate of charge was about 14 million per cent and in the second 18 million per cent: Annual Report of the Director of Fair Trading 1987]."

Goode: Consumer Credit Law and Practice. 1A [1.4].

It would seem that in the UK there has always been a dual standard applied and that payments for Bills such as fuel supplies, telephone, and housing costs such as mortgages are seen as the epitome of respectability whereas bills for debt are frowned upon. Early this century the regulatory position was aimed more at protecting the minority of people driven into debt to make ends meet. This was founded largely on the premise that they faced not only hardship in itself but also particular risk of exploitation by unscrupulous lenders.

In the 1960's Moneylenders were strictly regulated, as well as needing a licence they had a number of restrictions



placed on them, they had to include an interest rate in loan contracts and risked having the terms of a loan altered if they were judged harsh and unconscionable [interest over 48% a year was assumed to be excessive unless it could be proved to be].

In the 1960's courts maintained the approach between the 'honest' and the 'dishonest' debtor, assuming that debts were accrued by means that bordered on the criminal or were at least feckless and negligent. The ultimate sanction was imprisonment. In 1969 the Payne Report recommended that the issues arising out of multiple debts be recognised and that debt itself was not seen purely as a judicial issue. The report recommended a more 'social' approach within a context of general welfare provision.

The current law stems from the 1971 report of the Crowther Committee, appointed in 1968 to consider and make recommendations about the law and practice relating to consumer credit. The Consumer Credit Act 1974 was meant to create a new era in consumer credit where the industry of credit providers would be freed from outdated restrictions and, for the first time, the consumer would have comprehensive protection and truth in lending.

Crowther stated

"It remains a basic tenet of a free society that people themselves must be the judge of what contributes to their material welfare. Since the vast majority of consumers use credit wisely and derive considerable benefit from it, the right policy is not to restrict their freedom of access .. but to help the minority who innocently get into trouble to manage their affairs more successfully."

The use of consumer credit was affected by a number of interacting factors including Government policies which lifted the 'corset' on clearing banks in 1980 and hire purchase controls were removed in 1982. Banks entered into direct competition with Building Societies in the mortgage market and the development of this market has been phenomenal. Legislative and technological development has affected the competitive position of the financial sector. The personal loans market has been subject to almost continuous diversification and innovation. Credit

Cards are used much more to the extent that they are a phenomenon in themselves.

Whilst there may be a residue of the traditional mistrust of the use of credit it cannot be argued that this is dominant any longer.

Credit usage is the norm for almost all people in modern day society at some point or other. There are many excluded from mainstream, cheap finance or reasonable access to reasonably priced credit however, given access it is clear that almost all modern day participants in our consumer and materialistic society would perceive the use of credit as perfectly normal, sociable activity. For many it is unthinkable that they would not access the mortgage, credit card participation levels. For some it is a requirement of employment that they can access banking facilities and for other it is necessary that they can access credit facilities.

The notion that credit is not a right of participants in modern day society can therefore be challenged. It is a right of people not to be disadvantaged because of their race, religion, culture, health, physical circumstances and their social standing. There should be an equality of opportunity and to ensure this people should not be excluded from access to credit on any of the equal opportunity grounds mentioned above.

In the UK the Office of Fair Trading report 'Overindebtedness', it is stated: "Nowadays using some form of credit is an acceptable practice among all age groups except the over 65's. The greatest credit users are those in the 25-44 age group." And "There seems little doubt that use of credit will increase in the future. Insofar as the younger age groups are concerned, 97% of the 16-17 years olds interviewed expected that they would have used at least one form of credit by the time they were 25."

## Overindebtedness – A very English definition

"'credit' will be used to refer to transactions at the point where they are considered desirable, 'debt' will be used to cover the problems — for borrowers and for lenders — that result."

Richard Berthoud.<sup>4</sup>

"Most experts agree that the primary cause of overindebtedness is credit."

Nick Huls<sup>5</sup>

Overindebtedness is seen as a failure, as Nick Huls describes in his report.[14]. Failure is as much a part of the market process as is success, it simply hasn't got access to the riches of life success has. A certain amount of failure is used by the credit provider as a guide to margins, and costed into their product beforehand. Nick Huls writes 'A society that accepts credit offered by the market should also accept overindebtedness as an inherent side effect. The fact that there are casualties shows that the market is working, because profit and loss are indissolubly linked with competitive market processes, and winners as well as losers are an outcome.'

The term 'Overindebtedness' is relatively new, especially in the UK and arises out of increased contact with our colleagues in Europe. In the 1980's many phrases were used in the UK to identify people who were experiencing problems with their financial circumstances.

The Director General of Fair Trading named a report of 1989; 'Overindebtedness' and this may have been the first high profile use of the term in the UK.<sup>6</sup>

The report, 'Overindebtedness' set out a definition of overindebtedness as: "an objective measure of heavy commitment — based on disposable income left after satisfying credit and mortgage commitments — which, so far as we know, is new and which offers a tool which can be used to help monitor the extent of overindebtedness".

## Average household expenditure

The average household expenditure for each income range has been derived from the published report of the FES for each year. For mortgage instalments, where the weekly instalment when deducted from the total income leaves an amount which is less than the average household expenditure excluding housing for that income range, this has been treated as

heavy commitment.

For credit repayments two methods have been used.

1. Where the total weekly repayment when deducted from the total income leaves an amount which is less than the average total household expenditure for that income range, this has been treated as heavy commitment.
2. Where the total weekly repayment when deducted from the total income leaves an amount which is less than the average household expenditure excluding average credit repayments for that income range, this has been treated as heavy commitment.<sup>7</sup>

## Existing definitions

There is also a lack of common definitions of Money/Debt Advice and what constitutes overindebtedness.

- ❖ In the UK the PSI study 'Credit and Debt'<sup>8</sup> distinguished between;
  - Arrears [any missed payment] over the course of the previous year;
  - Problem debts [those where there is a problem paying the money]
  - Current arrears [debts at the time of the survey].
- ❖ In Belgium definitions are different from one law to another;
  - The law on consumer credit refers to a debt as a 'financial situation which is aggravated.'
  - Debt rescheduling adopts the notion of 'any person for whom it is impossible to meet his outstanding commitments in a satisfying way'.

- ❖ In Germany it is where the salary is no longer sufficient to meet payments due by law. The following definition of overindebtedness as 'the sum of all the financial commitments owed by a household' was put forward in 'Consumer Lending and Overindebtedness among German Households'<sup>9</sup> by Dr. Jur. Udo Reifner as;

- Overindebtedness can only occur if there is a previous acquisition of credit.

- Over-commitment occurs when a commitment falls due which cannot be met from foreseeable income in the long term. the borrower receives

the equivalent of an advance on wages-in the same way a business takes an advance from a bank.

- This leads to a process which means a shortage of income in the past arises as an additional obligation in the debts of the future."

The report concludes "A person is considered overindebted when he or she is objectively unable to pay, that is to say his or her income, after deduction of living expenses is no longer sufficient to meet the repayment of debts as they fall due."

This is a quote from the German Debt Adviser Ulf Groth<sup>10</sup>, and I believe it is a good and acceptable definition.

## Conclusion

There is little doubt that the rise of overindebtedness has coincided with the rise in consumer debt. All studies examined throughout the EC member states have demonstrated this quite clearly. The reports referred to in this paper and that are listed below contain enough empirical data to break an elephant's back.

Whether categorisation of overindebtedness is of any use or purpose is debatable. The fact is that no matter how the individual became overindebted there are only limited solutions and only access to justice is the key to any solution.

In Europe overindebtedness is associated with feelings of revenge and despair. However in France the law regarding bankruptcy is called "a text of hope". Its aim is to maintain dignity. The new chance approach offers the overindebted a route to satisfactorily resolve past financial matters and start again with new hope for a better future.

I suggest that we adopt Groth's definition. Whilst it falls short of the empirical formula that some seek and does not satisfy the scientific or mathematical, whom, it seems always demand straight lines, it is the most sensible definition.

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## Footnotes

<sup>1</sup> Credit and debt, PSI.1992 ISBN 0 85374 497 1

<sup>2</sup> Janet Ford, Consuming Credit: Debt and Poverty in the UK. CPAG. 1991 ISBN 0 94674432 7

<sup>3</sup> Overindebtedness: A report by the DG of Fair Trading. UK. July 1989

<sup>4</sup> Social Security Advisory Committee, Research Paper 1. Credit, Debt and Poverty. Richard Berthoud, PSI HMSO 1989 ISBN 011 321 205 4

<sup>5</sup> Overindebtedness of Consumers in the EC Member States: Facts and Search for Solutions.

Collection Droit Et Consommation. 1994 ISBN 90 6321 9725

<sup>6</sup> Overindebtedness: A report by the DG of Fair Trading. July 1989

<sup>7</sup> Overindebtedness: A report by the DG of Fair Trading. July 1989

<sup>8</sup> Credit and Debt. PSI 1992 ISBN 0 85374 497 1

<sup>9</sup> Consumer Lending and Overindebtedness among German Households. Expert report on the instructions of the DGXXIV of the European commission. Project No: - 2600/97.000120. Prof. Dr. Jur. Udo Reifner.1998

<sup>10</sup> Debt Advice. 6<sup>th</sup> Edition 1988 p.16 Ulf Groth





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# Consumer Debt Net Aims and Objectives

**“The network shall deal with debt and budget advice, budget standards, household economic analysis, consumer and social problems due to overindebtedness.”**

The main objective of the network is to encourage member organisations to provide practical action to prevent consumer overindebtedness and to facilitate consumer assistance by the provision of budget and debt advice. The network will also strive to achieve exchanges of information and research results which may provide more general knowledge of such practices and the way in which they are handled in various countries.

Consumer Debt Net will:

- establish and maintain an up to date list of contacts in each participating country,
- maintain regular contacts in particular by means of an annual conference and exchanges of view on matters of topical interest through multilateral contacts of all kinds,
- mutually exchange information to enable members to gain an overview of each other methods, legal and administrative arrangements,
- to work towards better and commonly accepted methodology and definitions relation to debt advice, budget standards and debt prevention throughout Europe,
- collect information on creditors practice and procedures in relation to consumers and to co-operate informally at an operating level in preventing marketing malpractice's as they arise. Participants should use their best endeavours to assist each other, subject to national law and practice and availability of resources,
- organisation of special training for advisers,
- planning and realisation of collective actions in European countries,
- intervention on European legislation, for example in relation to debt settlement, credit rules and bankruptcy laws.

Participation is open to organisations from each European country, who would normally be involved with budget advice, debt settlement, debt counselling or budget standards, though for certain countries other arrangements may be necessary.



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## THE EUROPEAN CONSUMER DEBT NETWORK

A project supported by the Nordic Council of Ministers

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